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May 18, 2009

VIA E-FILE

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Suite 101
Washington, DC 20423-0001

Re: STB Finance Docket No. 34914—Joint Petition of the California-Nevada Super Speed Train Commission and the American Magline Group for Leave to File Reply to a Reply

Dear Secretary Quinlan,

DesertXpress Enterprises, LLC objects to the above-referenced Joint Petition. As the California-Nevada Super Speed Train Commission and the American Magline Group (collectively, "Petitioners") acknowledge, Board regulations prohibit the submission of a reply to a reply. 49 C.F.R. § 1104.13(c); *see also, e.g., Dairyland Power Coop. v. Union Pac. R.R. Co.*, STB Docket No. 42105, slip op. at 4 n.5 (STB served July 29, 2008). The Petitioners' self-styled "rebuttal" contains no material that would add to the Board's understanding of the issues in this proceeding, and presents no compelling reason that might justify suspension of the Board's procedural rules. *See Ocean Logistics Mgmt., Inc. v. NPR, Inc. and Holt Cargo Sys., Inc.*, Docket No. WCC-102, slip op. at 3 (STB served Jan. 14, 2000) (explaining that the Board requires a "persuasive showing that an exception to Rule 1104.13(c) should be made"); *Potomac Elec. Power Co. v. CSX Transp., Inc.*, Docket No. 41989, slip op. at 1 n.1 (STB served June 27, 1997) (explaining that the Board allows waiver of Rule 1104.13(c) only when there are "compelling reasons for [such] a waiver"). The Petitioners simply restate legal arguments that they attempted to make in their Joint Petition to Intervene and Reopen, and include factual allegations that have no relevance to the central issue in this proceeding: whether the Board (indeed, any Federal agency) has jurisdiction over the grant of authority to construct and operate dedicated high-speed passenger rail lines that function as part of the nation's larger system of interstate rail transportation. Indeed, the Petitioners' reply to DesertXpress' reply is nothing more than "an attempt to have the last word in argument, which contravenes the intent of [the Board's] prohibition of replies to replies." *Id.*

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Because acceptance of the above-referenced Joint Petition under these circumstances would undermine the objectives of finality and expediency upon which the Board's rule against replies to replies is based, and because the Petitioners have presented no compelling reason for suspending that rule, the Board should reject that Petition. Should the Board decide to consider that Petition and the Petitioners' "rebuttal," DesertXpress requests that—in the interest of fairness—the Board provide it an opportunity to file a reply to the "rebuttal" to the reply to the Joint Petition to Intervene and Reopen.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Linda J. Morgan". The signature is fluid and cursive, with the first name "Linda" being more prominent than the last name "Morgan".

Linda J. Morgan
Counsel for DesertXpress Enterprises, LLC

CERTIFICATE OF SERVICE

I, Linda J. Morgan, hereby certify that on the 18th day of May, 2009, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, on all parties of record in Finance Docket No. 34914.


Linda J. Morgan